

## **CJEU: transfer pricing adjustments are not consideration for VAT-taxed services in the present case, but may constitute a price adjustment for previous supplies of goods**

On May 13, 2026 the Court of Justice of the European Union ('CJEU') rendered judgment in the *Stellantis Portugal* (C-603/24, 'Stellantis PT') case. In this judgment the CJEU ruled on the VAT treatment of transfer pricing adjustments between the sales entity Stellantis PT and the car manufacturers within the group. The transfer pricing adjustments are intended to arrive at a pre-determined profit margin at Stellantis PT, irrespective of the amount of the variable (repair) costs at that entity. The CJEU ruled that the transfer pricing adjustments do not constitute payment for separate repair services Stellantis PT performed for the group manufacturers. The transfer pricing adjustments could possibly be regarded as (upward or downward) adjustments of the original price for the supply of cars by the manufacturers to Stellantis PT. Whether that is the case, has been left up to the national Portuguese court to decide. The judgment is discussed in more detail below.

In a previous [tax alert](#) we discussed the Opinion issued by the Advocate General ('AG') in these proceedings. The AG had come to a similar conclusion. Interestingly, in her Opinion, the AG had discussed the VAT consequences of different types of transfer pricing adjustments in a more general sense. As expected, the CJEU limited itself to the question posed and did not elaborate on this. However, the AG's considerations are helpful for a detailed analysis of the VAT consequences of the transfer pricing structure in your organization.

We do not expect more judgments on the VAT consequences of transfer pricing adjustments any time soon. For multinational organizations, now is the time to apply the framework outlined by the CJEU to their own situation. In doing so, in transactions involving non-EU countries, the consequences the adjustments may have for any import duties due should also not be overlooked.

### **1. Facts and background**

Stellantis PT is part of an international automotive group engaged in the development and sale of cars and spare parts and accessories. Within this group, Stellantis PT fulfills the role of sales company for Portugal. It purchases vehicles from other group companies established in various EU Member States that act as manufacturer, and subsequently supplies these vehicles to Portuguese dealers. The dealers, in turn, resell the cars to end-customers.

Within the Stellantis group, it has been laid down in transfer pricing policy and by means of an agreement concluded in 2004 that Stellantis PT must realize a pre-determined profit margin. To ensure that margin is realized, at the beginning of the year the manufacturers estimate what the expected selling prices and costs for Stellantis PT will be. Based on those projections, they set the (provisional) purchase prices at which Stellantis PT will purchase the cars from the group manufacturers. During the year Stellantis PT keeps a record of all the costs actually incurred and the realized income. Subsequently, each quarter (positive or negative) transfer pricing adjustments are made between the manufacturers and Stellantis PT, so that Stellantis PT's final margin corresponds to the pre-agreed fixed profit margin.

An important element of Stellantis PT's cost structure concerns the costs for car repairs. If defects occur (for example in the case of recall actions or within the warranty period) and where roadside assistance is provided, it is the Portuguese dealers that perform the repair services. Based on the agreements between Stellantis PT and the dealers, the dealers charge Stellantis PT for the repair costs, increased by Portuguese VAT. Stellantis PT includes these costs – together with other relevant expense items – in its periodic reports to the EU manufacturers from which it purchased the cars. The income and costs thus reported constitute the basis for the aforementioned transfer pricing adjustments.

According to Stellantis PT and the manufacturers, these adjustments are solely intended to subsequently adjust the original internal selling price of the cars (for supplies by the manufacturers to Stellantis PT), so that the agreed profit margin is achieved. They therefore regard the transfer pricing adjustments as an adjustment of the payment for the original supply of cars and in that context issue corrected invoices.

The Portuguese tax authorities however use another approach. In their view, the transfer pricing adjustments also include a component related to the repairs performed by the dealers. According to the tax authorities, 'passing on' these repair costs to the manufacturers must be regarded as payment for a repair service that Stellantis PT performed for the manufacturers. Portuguese VAT would have been due on this alleged service (in the years relevant to this case). The Portuguese tax authorities imposed supplementary VAT assessments for this. The national Portuguese court asked the CJEU for a preliminary ruling on whether these transfer pricing adjustments can be regarded as a payment for repair services for VAT purposes.

## **2. CJEU judgment**

In its judgment, the CJEU addressed the question for which the national Portuguese court had sought a preliminary ruling, i.e. whether the transfer pricing adjustments between Stellantis PT and the group manufacturers constitute payment for the repair services performed by Stellantis PT.

Whether this is the case must be assessed against familiar VAT criteria: is there a legal relationship between the service provider and the purchaser of the services, whereby reciprocal services are exchanged and the remuneration received by the service provider constitutes the value actually given in return for an individual service supplied to the recipient of the services. The latter is the case if there is a direct link between the service supplied and the consideration received.

To assess the legal relationship, the CJEU looked at the agreement concluded between Stellantis PT and the group manufacturers in 2004. The agreement only relates to transfer pricing agreements that are intended to realize a pre-determined profit margin at Stellantis PT on its sales activities in Portugal. None of the clauses in the agreement indicate that there is a legal relationship under which Stellantis PT performs repair services for the group manufacturers.

Even if the referring court accepted that there was a relevant legal relationship, it still needs to be assessed whether there is a direct link between the service supplied and

the consideration received. The direct link can be broken because the consideration is voluntary, uncertain or difficult to determine. In that context, the CJEU noted that in the present proceedings, the calculation of the transfer pricing adjustments did not only take the repair costs borne by Stellantis PT into account, but also any other business expenses Stellantis PT incurred for selling the cars, including operating costs such as personnel, electricity and marketing. These costs help determine whether, and to what extent, the transfer pricing adjustments will result in Stellantis PT receiving an amount or having to pay an amount. Moreover, the CJEU noted that Stellantis PT is never certain that all the costs it incurred will be reimbursed by the group manufacturers, but only that transfer pricing adjustments will be made such that on balance the agreed profit margin will be realized. According to the CJEU, the existence of a direct link between the service performed and the payment received is therefore at most indirect.

According to the CJEU, it also does not follow from the 2004 agreement that Stellantis PT acted in its own name and on behalf of the group manufacturers and intervened in the repair services the Portuguese dealers performed for those manufacturers. There is thus also no (deemed) service based on a commissionaire situation were Stellantis PT to pass on the costs invoiced by the dealers to the group manufacturers.

In short, the CJEU therefore did not follow the Portuguese tax authorities in their position that the transfer pricing adjustments must be regarded as payment for a separate repair service performed by Stellantis PT for the manufacturers.

Lastly, the CJEU noted, with reference to the Opinion issued by the AG, that the transfer pricing adjustments, where appropriate, may be regarded as (upward or downward) adjustments of the original price for the supply of cars by the manufacturers to Stellantis PT. The CJEU has left this up to the national Portuguese court to decide.

### **3. Practical consequences**

The VAT qualification of transfer pricing adjustments is increasingly becoming a focus of attention in the tax practice. The CJEU has recently ruled on this issue in several proceedings. In the present case, it is especially important that in the agreement between Stellantis PT and the group manufacturers there is nothing to indicate that there is a legal relationship under which Stellantis PT performs repair services for the group manufacturers, and that the transfer pricing adjustments are difficult to determine in advance because these are not solely determined on the basis of the repair costs incurred. According to the CJEU, this means that the transfer pricing adjustments must not be regarded as payment for separate repair services that Stellantis PT had performed for the manufacturers. Although the CJEU doesn't explicitly say so, it appears – also due to the reference to the AG's Opinion – that the Court believes that the adjustments in this case must be regarded as (upward or downward) adjustments of the original selling prices for the cars that the manufacturers had previously supplied to Stellantis PT.

Given the facts of this case, we consider this to be an understandable outcome. It was not without reason that the Stellantis group treated the transfer pricing adjustments as price adjustments. Of practical importance is that such an outcome also has

consequences for compliance. Each transfer pricing adjustment that is regarded as a price adjustment of a previous supply must, in principle, be attributed to a specific historic supply. The price adjustment subsequently results in corrected invoices, and potential adjustments in the relevant VAT returns and listings. These adjustments can be very complex, especially now that VAT compliance is increasingly transitioning to almost real-time e-invoicing and e-reporting.

Partly for this reason, a transfer pricing structure is being sought in practice whereby the periodic transfer pricing adjustments are not so much linked to a previous sales transaction, but are treated as payment for a separate intra-group service. In our view, the outcome of this judgment does not have to change this. The CJEU judgment in this case and previous proceedings show that the VAT treatment is largely determined by what parties have contractually and actually agreed with one another. If it fits within the economic business rationale that there are separate services – for example marketing, logistical or support services – it seems that, provided that this is properly laid down in mutual agreements, it will still be possible to determine that transfer pricing adjustments (structurally made on a unilateral basis) constitute payment for such services. We recommend that in implementing this, you not only take profit taxes and VAT into account, but in the event of imports, also pay especial attention to any import duties due. The transfer pricing choices made and their documentation also often make a difference here.

For organizations, now is the time to review current transfer pricing agreements, redetermine the VAT and customs consequences and, where necessary, make changes to or clarify the structure, documentation and intra-group agreements. A proper and transparent structure is becoming increasingly important, not only to avoid penalties, interest expenses or the refusal of the recovery of input tax in intra-group transactions, but the ongoing introduction of e-invoicing and digital reporting obligations in various countries also means that invoices must be issued sooner than was previously the case and in some cases must be reported to the tax authorities almost in real-time.

If you have any questions or would like to discuss the impact of transfer pricing adjustments within your organization, the advisors of Meijburg & Co's Indirect Tax Group are keen to help you. Feel free to contact one of our specialists or your usual designated contact at Meijburg.

KPMG Meijburg & Co  
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